

## CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Josephine Ogboye	Team: Team # 2	CCRB Case #: 200817853	<input type="checkbox"/> Force	<input checked="" type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Tuesday, 12/09/2008 9:00 PM	Location of Incident: East 120th Street and 3rd Avenue	Precinct: 25	18 Mo. SOL 6/9/2010	EO SOL 6/9/2010	
Date/Time CV Reported Wed, 12/10/2008 2:21 PM	CV Reported At: CCRB	How CV Reported: In-person	Date/Time Received at CCRB Wed, 12/10/2008 2:21 PM		

Complainant/Victim	Type	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Victor Charles	06096	941538	MN IRT
2. POM Fermin Pichardo	06784	942352	MN IRT
3. POM Christophe Contreras	29229	945611	MN IRT
4. SGT Howard Zweben	03711	933512	MN IRT

Officer(s)	Allegation	Investigator Recommendation
A.POM Victor Charles	Abuse: Officer Victor Charles stopped the car in which § 87(2)(b) and an individual known as § 87(2)(b) were occupants.	
B.POM Fermin Pichardo	Abuse: Officer Fermin Pichardo stopped the car in which § 87(2)(b) and an individual known as § 87(2)(b) were occupants.	
C.SGT Howard Zweben	Abuse: Sgt. Howard Zweben supervised the frisk of § 87(2)(b) and an individual known as § 87(2)(b)	
D.SGT Howard Zweben	Abuse: Sgt. Howard Zweben supervised the search of § 87(2)(b) and an individual known as § 87(2)(b)	
E.POM Victor Charles	Discourtesy: Officer Victor Charles spoke obscenely and/or rudely to § 87(2)(b) and § 87(2)(b)	
F.POM Fermin Pichardo	Discourtesy: Officer Fermin Pichardo spoke obscenely and/or rudely to § 87(2)(b) and § 87(2)(b)	
G.POM Christophe Contreras	Discourtesy: Officer Christopher Contreras spoke obscenely and/or rudely to § 87(2)(b) and § 87(2)(b)	
H.SGT Howard Zweben	Abuse: Sgt. Howard Zweben supervised the search of the car in which § 87(2)(b) and an individual known as § 87(2)(b) were occupants.	

## Synopsis

§ 87(2)(b) filed this complaint with the CCRB in person on December 10, 2008. On December 4, 2008, while driving his vehicle (determined through DMV to be a tan Hyundai) with three other occupants, § 87(2)(b) § 87(2)(b) and § 87(2)(b) (unknown last name), § 87(2)(b) was stopped by two officers he identified as Officer Victor Charles and Officer Fermin Pichardo at the intersection of East 120<sup>th</sup> Street and 3<sup>rd</sup> Avenue, in Manhattan (**allegations A and B**). During the stop, two additional officers, one of who § 87(2)(b) identified as Officer Christopher Contreras and the other identified through investigation as Sgt. Howard Zweben, joined the initial two officers. The occupants of the vehicle were each instructed to exit the vehicle one after the other and they were frisked and allegedly searched by the officers (**allegations C and D**). § 87(2)(b) questioned the officers' reason(s) for stopping his vehicle and he was informed that there was a report of an assault with a knife involving three or four Hispanic males in a silver vehicle. After they were frisked, Officer Charles, Officer Pichardo and Officer Contreras allegedly spoke discourteously towards § 87(2)(b) and § 87(2)(b) by making statements to the effect of "this guy gets pussy" (**allegations E, F, and G**). Also, Officer Charles and Sgt. Zweben searched § 87(2)(b)'s vehicle (**allegation H**).

§ 87(2)(g)

## Summary of Complaint

§ 87(2)(b) was interviewed at the CCRB on December 10, 2008 (encl. 5a-e). § 87(2)(b) is a § 87(2)(b), in Queens. At the time of his CCRB interview, § 87(2)(b) was § 87(2)(b).

On December 9, 2008, at approximately 9:30PM, § 87(2)(b) was pulled over by police officers at the intersection of 3<sup>rd</sup> Avenue and East 120<sup>th</sup> Street, in Manhattan. § 87(2)(b) was driving his vehicle, which he described as a 2005 champagne (determined by investigation to be tan as per DMV search [encl. 14a]) Hyundai with plate # § 87(2)(b). He also had three friends: § 87(2)(b) and § 87(2)(b) did not have § 87(2)(b)'s last name) in the vehicle with him. § 87(2)(b) was in the front passenger seat, and § 87(2)(b) was behind § 87(2)(b) while § 87(2)(b) was behind § 87(2)(b). § 87(2)(b) explained he just made a quick stop at one of his friend's place on East 119<sup>th</sup> Street (he did not know the exact address) but the rest of the group remained in the car while he went upstairs. He was inside the building for about five minutes. As he left the building on East 119<sup>th</sup> Street, he made two right turns and at East 120<sup>th</sup> Street he was stopped by four police officers in a marked van and a marked car. § 87(2)(b) and the rest of his friends were not smoking anything or doing anything unusual to attract the suspicion of officers. There were two traffic signals before § 87(2)(b) was stopped and he stopped at both traffic signals. He was stopped after the second traffic signal.

§ 87(2)(b) provided a detailed description of the officers and the vehicles they were in. There was a black male officer, identified as Officer Victor Charles, shield # 6096 and a white male officer, shield # 3711, identified through investigation as Sgt. Michael Zweben and both of them came out of the van. There

were also two Hispanic male officers who came out of the car. One of them was identified as Officer Christopher Contreras, shield # 29229 (5' 7" tall, short brown hair, in his thirties) and the other as Officer Fermin Pichardo, shield # 6784. § 87(2)(b) obtained their names and shield numbers from their uniforms but he was unable to obtain the name of the white officer because the officer kept turning away.

Officer Contreras approached § 87(2)(b)'s vehicle and asked him for his documents, which § 87(2)(b) provided. § 87(2)(b) also told Officer Contreras that his cousin is a detective and he showed him his Police Benevolence Association (PBA) card and also told him that his sister works in the arraignment office in Queens. Officer Contreras took § 87(2)(b)'s documents back to the van and shortly afterwards, Officer Charles approached him along with Sgt. Zweben (who approached the passenger side) and instructed § 87(2)(b) to exit the vehicle. § 87(2)(b) was unsure if Officer Charles instructed the rest of his friends to exit the vehicle, but they all did and were all frisked and searched. § 87(2)(b) could not provide a detailed description regarding the frisk and search of his friends because he was told to turn his back and not worry about them. However, from what he was able to observe, he was sure that the officers patted them down and reached into their pockets). Officer Contreras and Officer Charles were on the left side of the car while Sgt. Zweben and Officer Pichardo were on the right side of the car.

Officer Contreras was the one who frisked and searched § 87(2)(b) by patting him down, reaching into his jeans pockets and his jacket pockets. § 87(2)(b) had his wallet in his pants pocket and he had some medicine (Benedryl and cough drops) in his jacket pocket. § 87(2)(b) noted that he was unsure about the officer who frisked and searched § 87(2)(b) and Kareem, but he knew it was either Officer Pichardo or Sgt. Zweben. He, however, observed Sgt. Zweben reach into Kareem's pockets. Officer Charles frisked and searched § 87(2)(b) by patting him down and reaching into all his pockets. § 87(2)(b) had a bunch of condoms in his pockets and once Officer Charles discovered them, he began to make "smart comments and wise cracks" about the condoms such as, "This guy gets a lot pussy." Then Officer Contreras and Officer Pichardo joined in by saying things to the effect of, "No, no this one gets more pussy." Officer Contreras said § 87(2)(b) gets more "pussy" while Officer Pichardo said § 87(2)(b) gets more "pussy." Sgt. Zweben remained quiet during this time, and nothing was recovered from any of them.

After they were frisked and searched, Officer Charles and Sgt. Zweben searched § 87(2)(b)'s car while § 87(2)(b) and his friends were asked to stand behind the car. Officer Contreras and Officer Pichardo stood by them while the car was being searched. § 87(2)(b) was able to look back a few times and he observed Officer Charles search the left front and back side of his car while Sgt. Zweben searched the front passenger area and the rear right of the vehicle. The officers went through the glove compartment, checked under the seats and the compartments at the side of the doors. § 87(2)(b)'s CD's and other belongings were moved around, but the officers did not find or remove anything from the vehicle. The car search lasted for about five minutes. The trunk was not searched.

They were then told to return to the car and § 87(2)(b) asked the officers why they were searched. Although the officers never told them why they were searched, Officer Pichardo mentioned that there was a 911 call regarding a stabbing. Officer Charles then added that there was a stabbing and a Hyundai involved. The officers did not provide any further information regarding who made the call or where it came from.

§ 87(2)(b) explained that Officer Contreras and Officer Pichardo had run his license when he was initially stopped but did not find any warrants. However, Officer Charles then ran his license again and told him that he had a warrant. Officer Charles then told § 87(2)(b) that he could do two things: take him in for the warrant or let him go. § 87(2)(b) disputed this and asked Officer Charles to show him the screen. The screen showed about three or four § 87(2)(b)'s with different dates of birth from that of § 87(2)(b). § 87(2)(b) pointed his out to Officer Charles and told him that he (Officer Charles) had nothing on him. § 87(2)(b) The entire interaction lasted for about fifteen minutes and the officers left without any summonses issued or arrests made.

### **Results of Investigation**

§ 87(2)(b) was interviewed at the CCRB on January 9, 2009 (encl. 6a-e). § 87(2)(b) is a § 87(2)(b). He is also § 87(2)(b).

On December 9, 2008, at approximately 9:00PM, § 87(2)(b) was one of the occupants of the vehicle being driven by his friend, § 87(2)(b). Also in the vehicle with them were § 87(2)(b) and § 87(2)(b) (AKA § 87(2)(b)). The group was on their way back from a college basketball game in

the Bronx and had made a brief stop at one of § 87(2)(b)'s family friend's place a few blocks from where they were stopped. § 87(2)(b) went upstairs briefly while the group remained in the car.

As the group approached the intersection of East 120<sup>th</sup> Street and 3<sup>rd</sup> Avenue, in Manhattan, they were stopped by two police officers in a marked police car. One of the officers, identified through investigation as Officer Victor Charles, (described as a 5' 11" tall uniformed black male in his mid-thirties and firm build) approached them on the driver's side and asked § 87(2)(b) for his license and registration. § 87(2)(b) asked the officers why they were being stopped and provided his documents as well as a PBA card because one of his relatives is a police officer. The second officer was identified through investigation as Officer Fermin Pichardo. § 87(2)(b) explained that they were not doing anything in the car such as drinking, smoking, or passing anything around, which would have seemed out of the ordinary and drawn the attention of the officers. Both officers returned shortly and began talking to them casually and asking them random questions such as where they were coming from and what game they had gone to see.

As the officers spoke to them, two other uniformed officers, identified through investigation as Officer Christopher Contreras and Sgt. Howard Zweben arrived in a van and also approached the vehicle. § 87(2)(b) got upset and questioned why the officers stopped them and why the officers were questioning them. Officer Contreras then asked § 87(2)(b) to step out of the vehicle and proceeded to frisk him. § 87(2)(b) was able to turn his head around and observe Officer Contreras patting § 87(2)(b) (who had his hand on the hood) down, but he did not observe him reach into his pockets. While § 87(2)(b) was being frisked, the other officers were asking the rest of the group questions about their personal information (name, age, address, where they were coming from, etc.). § 87(2)(b) explained that he was nervous from the past experiences he has had with officers and the rest of the group kept their demeanor and tone calm while speaking with the officers. However, § 87(2)(b) seemed upset and he kept questioning the actions of the officers.

After § 87(2)(b) was frisked, the rest of the group was instructed to step out of the vehicle one after the other and they were also frisked. Officer Charles asked § 87(2)(b) who was positioned in the rear left, to step out of the car and proceeded to frisk him. Officer Charles instructed § 87(2)(b) to place his hands on the roof and spread his legs, which he did, and proceeded to pat him down from his shoulder down. Officer Charles did not reach into § 87(2)(b)'s pockets, but asked him if he had anything he was not supposed to. Officer Charles then asked § 87(2)(b) for his identification and as § 87(2)(b) took out his ID from his wallet, Officer Charles snatched his wallet from him, searched his wallet (a flip wallet), and found some condoms inside it. Officer Charles then said, "This guy gets pussy." Officer Contreras also commented about § 87(2)(b) and § 87(2)(b) getting a lot of "pussy." Officer Pichardo then asked § 87(2)(b) (positioned in the right rear side) to step out of the car and also frisked him. § 87(2)(b) believed that Officer Pichardo reached into § 87(2)(b)'s pockets because he pulled out a blunt wrap paper and stated, "Oh, I know what this is for." Officer Contreras and Sgt. Zweben did not participate in the frisking. All four civilians were able to see the contact the officers had with each person because they turned around to observe the officers.

After the individuals were frisked, the officers instructed them to stand to the rear of the vehicle, and they all did along with Officer Pichardo and Officer Contreras, while Officer Charles and Sgt. Zweben searched the vehicle. Officer Charles was on the driver's side while Sgt. Zweben was on the passenger side. § 87(2)(b) turned his head a few times and was able to see what each officer was doing. Officer Charles searched the driver's area, moving the carpet and checking under the chair. He also checked the entire door area and the mid-section of the car where CDs were placed. The CDs were moved around and Officer Charles also looked at left rear area of the vehicle. Sgt. Zweben, on the other hand, checked the front passenger area by opening up the glove compartment and moving things around, checking under the seat and the carpet and also the rear area of the right side of the vehicle. The officers used their flashlights as they searched the car for about ten minutes and did not discover anything from the vehicle. § 87(2)(b) stated that § 87(2)(b) was also upset about the situation at this point and said something to the effect of, "I hate these fucking pigs." The officers heard him and told him that they did not appreciate the term and that they wondered where the term came from. § 87(2)(b) also told them that he felt the officers were harassing them. The officers told them that they were not being harassed.

After the vehicle was searched, the group continued to question the actions of the officers and why they were stopped. Officer Charles told the group that they had gotten a call regarding a stabbing and a stolen car with four males in a Hyundai. The group was then instructed to go back into the car, but § 87(2)(b) remained outside and walked toward Officer Charles' vehicle. Officer Charles still had § 87(2)(b)'s ID at this time and appeared to still be checking it on the computer. § 87(2)(b) came to find out later from

§ 87(2)(b) that Officer Charles informed him that he had a warrant which was false. § 87(2)(b) also observed § 87(2)(b) pointing into Officer Charles' screen and saying something to the effect of "That's not even me."

The entire interaction lasted for about an hour and the group was eventually allowed to leave. There were no arrests or summonses issued. § 87(2)(b) was able to obtain the names and shield numbers of the officers.

### ***Civilians Not Interviewed***

The undersigned investigator called § 87(2)(b) and § 87(2) five times between the periods of December 17, 2008 and February 13, 2009 and left messages for them to return the calls. § 87(2)(b) was scheduled for a CCRB interview on December 19, 2008, but he missed the appointment without notice. Two letters were sent to him on December 19 and 30, 2008. The letters were not returned by the United States Postal Services, and § 87(2)(b) did not respond to any of the contact attempts to reschedule an appointment. As for § 87(2)(b) negative results were obtained from searches conducted to establish his complete identification and contact address. On May 21, 2009, the undersigned investigator checked the Department of Corrections website and confirmed that § 87(2)(b) is not incarcerated.

### ***Identification of Officer Interviewed***

§ 87(2)(b) obtained the names and shield numbers of three of the officers, Officer Charles, Officer Pichardo, and Officer Contreras from their uniforms during the encounter. He also obtained the shield number "3711" for the fourth officer who was identified through investigation as Sgt. Zweben.

### ***Officers Interviewed***

**Officer Victor Charles** of the Manhattan North Impact Response Team (IRT) was interviewed at the CCRB on February 17, 2009 (encl. 7a-f). Officer Charles is a § 87(2)(b). On December 9, 2008, Officer Charles, and his partner, Officer Fermin Pichardo were assigned to the Impact Response Team in the 23<sup>rd</sup> and 25<sup>th</sup> precincts. They were both in uniform and were assigned to a marked police van #5629. Officer Charles was the operator and he did not have any entries in his memo book regarding the incident.

On December 9, 2008, at approximately 9:00PM, Officer Charles and Officer Pichardo received a radio run regarding several Hispanic individuals assaulting an individual with a knife in the vicinity of 3<sup>rd</sup> Avenue, in Manhattan. Officer Charles did not remember if there were any other specific details in the radio run, but he knew there was a mention of a grey vehicle. He did not remember if there was a detailed description, such as the make and model, of the vehicle provided. The officers were traveling northbound on 3<sup>rd</sup> Avenue when (within five minutes of the radio run) they observed a vehicle matching the description (a grey vehicle with clear windows containing several Hispanic males) as per the radio run. Officer Charles explained that the radio run had to be for the immediate vicinity of where they were because their radios were on the frequency for that vicinity, so they were alerted to whatever jobs were related to their assignments.

Officer Charles noted that the vehicle turned onto 3<sup>rd</sup> Avenue, heading north, in front of the officers. The vehicle crossed several lanes of traffic in front of the officers and the officers turned on their sirens to pull the vehicle over. The vehicle continued to travel north and again crossed several lanes of traffic and then turned onto East 120<sup>th</sup> Street, about three or four blocks away from where the officers initially signaled for them to stop, where they finally stopped. Officer Charles added that because of the driver's § 87(2)(b) erratic driving, another marked patrol car had spotted him and also followed him to pull him over. § 87(2)(b) moved from the far right lane onto the far left and then back to the far right on East 120<sup>th</sup> Street. While Officer Charles was pursuing § 87(2)(b) he observed § 87(2)(b) fidgeting behind the wheels and moving his hands as if trying to put something away. He also observed § 87(2)(b) looking into the middle console area and the occupants of the vehicle were all looking back at the officers. While these actions did not necessarily indicate that § 87(2)(b) and the rest of the group were committing any crime (because they might have been nervous), but they raised Officer Charles's suspicion. Officer Charles was unsure if the marked car arrived at where § 87(2)(b) was parked at the same time as his van.

Officer Charles and Officer Pichardo decided to approach the vehicle because it matched the parameters of the description they had received over the radio. Officer Charles approached on the driver's side while Officer Pichardo approached on the passenger side. Officer Charles tried to question § 87(2)(b) and the rest of the group to see if they (the officers) could eliminate them as a possible suspect in the incident. However, § 87(2)(b) got upset and believed the officers were harassing him. He believed the officers were discourteous for questioning him. Officer Charles questioned § 87(2)(b) about where he was coming from and § 87(2)(b) stated that he was coming from the Bronx. However, § 87(2)(b) was driving in the direction heading towards the Bronx. Officer Charles noted that this issue did not really matter but it was more reason to continue questioning § 87(2)(b) to be certain that he and the rest of the group were not the outstanding suspects.

As a precaution, and because he had observed § 87(2)(b) fidgeting with his hands, Officer Charles asked § 87(2)(b) to exit the vehicle and he patted § 87(2)(b) down to see if he had any weapons on him. All the other three occupants of the vehicle were also asked to exit the vehicle, one after the other, and each one was patted down for weapons. Officer Charles patted only § 87(2)(b) down (from the chest to the leg area) and believed each officer patted at least one person down. He was unsure of which officer patted who down, but he knew that Officer Pichardo was positioned in the front passenger area and must have patted the front passenger. He also knew that the other two officers were positioned towards the rear of the vehicle, with one on either side, and they also patted the individuals on the side they were positioned. Officer Charles did not reach into § 87(2)(b)'s pockets at any point and he did not observe any officer reach into anyone's pockets.

Officer Charles spoke mostly to the driver so he did not remember asking anyone of the individuals for their identification. However, Officer Charles believed that the individuals produced their identifications at some point. Officer Charles did not snatch anyone's wallet from him as he reached for his id. Officer Charles did not check anyone's wallet at any point, and he did not observe any other officer check anyone's wallet. Officer Charles did not make any comments to the effect of "This guy gets pussy." He also did not hear any officer make any statements to that effect.

§ 87(2)(b) and the rest of the group were asked to stand to the rear of the vehicle while Officer Charles checked inside the vehicle for any possible weapons. Officer Charles did not remember if any other officer checked the vehicle with him, but he checked reachable and grabbable areas of the vehicle such as the middle area between the seats, under both front seats and behind the front driver and passenger seats. Officer Charles did not check the glove compartment and he did not move anything around inside the vehicle. Officer Charles looked into the vehicle because he wanted to see if there were any weapons in the vehicle. He only checked areas where he observed § 87(2)(b) fidgeting with and the possible areas he could have reached before the officers stopped him. Officer Charles did not find anything suspicious inside the vehicle after checking for about five minutes.

After checking the vehicle, Officer Charles and the rest of the officers explained to § 87(2)(b) the reason for stopping him, and § 87(2)(b) decided to obtain their names and badge numbers and stated that he was going to file a CCRB complaint. Officer Charles ran a warrant search for § 87(2)(b)'s information to make sure that § 87(2)(b) did not have any warrants and noted that the investigation could obtain the information if necessary. He added that he was going to issue § 87(2)(b) a summons for cursing and carrying on and initially refusing to comply with the officers' request to provide his documents and exit the vehicle, but the officers used their discretion and chose not to because § 87(2)(b) had a PBA card which he showed the officers and stated that he had a family member in the Police Department. § 87(2)(b) provided his license after his tongue lashing: saying things to the effect of, "I'm gonna get you fucking cops. I'm gonna file a complaint." The rest of the group was also loud during the interaction. The officers tried to lighten up the encounter by talking about baseball and other casual issues.

**Officer Fermin Pichardo** of the Manhattan North Impact Response Team (IRT) was interviewed on February 19, 2009 (encl. 8a-f). On December 9, 2008, Officer Pichardo was assigned to the Impact Response Unit with his partner, Officer Victor Charles from 5:30PM to 2:35AM on December 10, 2008. They were both in uniform and were assigned to a marked van #5629. Officer Pichardo was the recorder, but he did not have any entries in his memo book regarding the incident. Below is a summary of his statement, which was generally consistent with that of Officer Charles.

On December 9, 2008, at approximately 9:00PM, Officer Pichardo and Officer Charles were driving in the vicinity of East 120<sup>th</sup> Street and 3<sup>rd</sup> Avenue, in Manhattan, when they got a call over the radio

regarding a man being stabbed or robbed with a knife. Officer Pichardo and Officer Charles stopped the vehicle § 87(2)(b) was driving because they § 87(2)(b) and the rest of the individuals in the vehicle) fit the description provided over the radio. Officer Pichardo believed that at the time, the job (over the radio) indicated that there were about four or five Hispanic males who jumped into a vehicle after stabbing or robbing a male with a knife. However, Officer Pichardo did not fully remember the details or specifics of the job at the time of his interview. Officer Pichardo also did not remember if a specific description of the vehicle in which the males “jumped into” was provided.

Officer Pichardo and Officer Charles both observed § 87(2)(b)'s vehicle and the rest of the occupants about two minutes after they heard the job in the radio run and they both decided to stop § 87(2)(b). The officers turned on their siren and signaled for § 87(2)(b) to pull over, but § 87(2)(b) did not immediately pull over. Officer Pichardo did not remember how far § 87(2)(b) drove before he eventually stopped, but he just knew that § 87(2)(b) “kept going.” Officer Pichardo explained that because he was not driving, he could not specifically recall how far they drove before § 87(2)(b) stopped. He did not recall if they had to travel at least two blocks or more before § 87(2)(b) stopped. Officer Pichardo did not recall anything else that might have drawn his attention to the group or raised his suspicion about them except for the fact that they fit the description provided over the radio.

Officer Pichardo approached the vehicle on the passenger side while Officer Charles approached on the driver's side. Officer Pichardo did not remember who he was speaking to but he remembered that once they approached the vehicle, he and Officer Charles explained to the group why they were stopped, and in response, one of the individuals told the officers that his cousin or uncle works at the CCRB and began cursing at the officers. Officer Pichardo did not remember whether or not it was the driver § 87(2)(b) or one of the passengers who made these comments. Officer Pichardo added that the entire group was cursing at the officers. He however did not remember exactly what they were saying. The individuals carried on throughout the interaction with the officers, but the only thing that stood out in Officer Pichardo's memory regarding what the individuals stated was the comment about having a family member who works at the CCRB.

There were other officers present with Officer Pichardo and Officer Charles, but Officer Pichardo did not remember who the officers were, how many they were, where they were from and whether or not they were males or females. Officer Pichardo also did not remember if these officers joined in interacting with § 87(2)(b) and the rest of the group.

Officer Pichardo did not recall exactly who instructed the group to exit the vehicle, but he noted that they were asked to do so because of the call that was received over the radio. Officer Pichardo was positioned by the right rear end of the vehicle and once the individuals were asked to step out of the vehicle, one of them was sent by Officer Charles to Officer Pichardo for him to frisk him. Officer Pichardo remembered frisking only one person and he did not reach into the individual's pockets. Officer Pichardo explained that the officers were concerned about the knife and the individual who got stabbed and that was the reason for patting the individuals down. They had to make sure that the individuals did not have any weapons on them. Officer Pichardo did not observe Officer Charles or the other officers pat the rest of the individuals down. He noted however, that did not mean that they were not patted down, but he just did not observe when it happened.

Officer Pichardo acknowledged that the officers asked the individuals for their IDs at some point after they were asked to exit the vehicle and the individuals eventually did provide their IDs, except for the individual who Officer Pichardo frisked. Officer Pichardo did not snatch any individual's wallet from him and he did not observe any officer do so. Officer Pichardo did not and he did not observe any officer go through any of the individuals' wallet after they were frisked. He also did not make any comments to the effect of “This guy gets pussy,” and he did not hear any officer make any comment to that effect. Officer Pichardo did not use the word “pussy” and he did not hear any officer use the word “pussy” while interacting with the individuals.

The officers tried to explain the reason for the stop to the individuals, but they just continued to carry on. Officer Pichardo walked away from them at this point and went to stand by the front passenger side of the police van which was positioned behind § 87(2)(b)'s vehicle. Officer Pichardo did not reach into the vehicle or search the vehicle and he did not observe any officer do so. He stated that from where he was positioned (after he walked back to the van), he did not see what was going on with Officer Charles and the rest of the group. Officer Pichardo did not recall where Officer Charles or the rest of the officers were positioned after he returned to the van. He also did not observe any officer search § 87(2)(b)'s vehicle at any point. Officer Pichardo did not recall if there was any cause to check the vehicle at the time of the stop.

The interaction lasted for about ten minutes. Officer Pichardo did not remember if there was any disposition regarding the stabbing.

**Sgt. Howard Zweben**, who is currently assigned to the 32<sup>nd</sup> Precinct, was interviewed at the CCRB on March 19, 2009 (encl. 10a-d). Sgt. Zweben is a § 87(2)(b). On December 9, 2008, Sgt. Zweben worked from 5:15PM, to 02:12AM on December 10, 2008. He was the patrol supervisor for the Impact Response Team, and he worked with Officer Contreras. They were in uniform and assigned to a marked vehicle and Officer Contreras was the operator. Sgt. Zweben did not have any entries in his memo book regarding the incident. His statement, which was also generally consistent with those of Officer Charles and Officer Pichardo, has been summarized below with any inconsistencies noted.

On December 9, 2008, at approximately 9:00PM, in the vicinity of East 120<sup>th</sup> Street and 3<sup>rd</sup> Avenue, in Manhattan, there was a radio run regarding an assault in the area involving weapons and in which the perpetrators left in a grey vehicle. Sgt. Zweben did not remember if there were any more details or specifics regarding the radio run. There was no description provided for the perpetrator(s), but that the individual(s) left in a grey car. A few minutes after receiving the job, Sgt. Zweben and Officer Contreras observed that Officer Victor Charles and Officer Fermin Pichardo in a different police vehicle (a van) had pulled over a group of individuals in a grey vehicle. They drove towards the officers in order to back them up and parked a few feet away from them. Officer Charles was positioned in the front left/driver's side while Officer Pichardo was by the front passenger's side. Sgt. Zweben believed there were four individuals in the vehicle and once he observed that Officer Charles was asking the driver to exit the vehicle, he and Officer Contreras exited their vehicle and approached them so that they could be positioned closer to the officers and watch the other individuals in the vehicle. Sgt. Zweben was positioned at the front right side of the vehicle while Officer Contreras was positioned to the rear. Sgt. Zweben explained that each individual was asked to step to the rear of the vehicle as they exited the vehicle one after another. Because of where he was positioned, Sgt. Zweben was unable to observe the frisking of the driver, § 87(2)(b) and the passenger positioned behind the driver, but he believed Officer Charles frisked § 87(2)(b).

Officer Pichardo also asked the front passenger to exit the vehicle and positioned him to the rear of the vehicle while Sgt. Zweben remained positioned to the front right side. Sgt. Zweben believed that the last individual to be removed from the vehicle was the right rear passenger, who was frisked by Officer Contreras. Officer Contreras checked the individual's waistband and patted down his pockets but did not reach into the individual's pockets. Sgt. Zweben also believed that Officer Pichardo had taken the front right passenger to the back, but he did not observe the frisk. The individuals were frisked because of the nature of the job the officers got over the radio, and a UF-250 (stop and frisk) report was prepared. Sgt. Zweben explained that he might have conducted the frisk along with Officer Contreras, but he was unsure. However, he was sure that he and Officer Contreras did not reach into any individual's pockets because he remembered observing Officer Contreras frisk the individual.

Once all four of them were frisked and positioned to the rear of the vehicle, the officers took a "quick look" at the reachable and grabbable areas of the vehicle to make sure that there were no weapons. Sgt. Zweben was still positioned to the right side and believed he looked in the back right of the vehicle while Officer Contreras might have looked in the front passenger area. Sgt. Zweben checked the floor of the back right of the vehicle and the seat area. Once Sgt. Zweben and Officer Contreras were done looking with their flashlights, they stepped to the back of the vehicle to stand with the individuals while Officer Charles and Officer Pichardo, who were positioned to the left, checked the left side of the vehicle. Sgt. Zweben did not observe the areas of the vehicle Officer Charles and Officer Pichardo checked. The officers did not recover any contraband from the vehicle.

Sgt. Zweben believed Officer Charles might have requested IDs from the individuals and Sgt. Zweben might also have asked one of the individuals (the one who Officer Contreras was dealing with ) for ID. Sgt. Zweben did not observe any officer snatch anyone's wallet from him and go through the wallet. He also did not hear any officer, upon observing condoms in an individual's wallet, say anything to the effect of "this guy gets a lot of pussy." Sgt. Zweben also did not do any of the mentioned and he did not at any point hear any officer use the word "pussy." He also did not at any point use the word "pussy" while interacting with the individuals.

Sgt. Zweben believed Officer Charles explained the reason for the stop to the individuals, but § 87(2)(b) who was the irate one among them, was upset about being stopped. § 87(2)(b) was cursing, telling the



officers that they had no “fucking” reason to stop him. Sgt. Zweben got the impression that § 87(2)(b) was in a rush to go somewhere because of his demeanor.

The interaction lasted for about five minutes and the individuals were free to leave once the officers were able to properly establish their identities.

**Officer Christopher Contreras** from the Manhattan North Impact Response Team (IRT) was interviewed at the CCRB on February 24, 2009 (encl. 9a-e). Officer Contreras is a 5’ 11” tall, 180-pound Hispanic male with brown hair and brown eyes. On December 9, 2008, Officer Contreras was assigned to the Impact Response Unit for the 23<sup>rd</sup> and 25<sup>th</sup> Precincts. He was working with Sgt. Howard Zweben, and he was the operator of marked RMP #4462. They were both in uniform. Officer Contreras did not have any entries in his memo book. Below is the summary of his statement, which was partly consistent with those of Officer Charles, Officer Pichardo and Sgt. Zweben.

Officer Contreras and Sgt. Zweben were patrolling the confines of the 25<sup>th</sup> Precinct when they observed the lights of a marked police van parked in the street. Officer Contreras drove towards them to ensure that everything was okay and he parked about ten to twelve feet behind the van. He explained that the fact that the lights were on was one indication that the officers might have needed assistance, so he and Sgt. Zweben drove there to be on the side of caution. Officer Contreras exited the vehicle and he was unsure if Sgt. Zweben also did the same. Upon approaching the van, Officer Contreras observed that two uniformed officers had stopped a vehicle with about four male occupants who were standing outside of the vehicle. Officer Contreras identified one of the officers, who was standing by the passenger side of the stopped vehicle, as Officer Victor Charles.

Officer Contreras observed the officers interacting with the group, but he did not hear exactly what they were saying. He just stood around to observe the area and ensure that everything was under control because there were four males and two officers (initially). Officer Contreras was positioned in the rear left side of the vehicle (about three to five feet from Officer Charles), while Officer Charles was positioned in the front left (driver’s) side. Officer Contreras believed that the individuals were patted down, but he did not remember if he patted any individual down. Officer Contreras did not remember if Sgt. Zweben patted any of the individuals down or had any interaction with them. Officer Contreras did not recall observing any officer reaching into anyone’s pockets. Officer Contreras was shown the “stop and frisk” report which noted him as an officer who stopped § 87(2)(b) at the time, place and location of the incident. Officer Contreras stated that it is possible that he did prepare the report, but he did not specifically remember doing so or frisking § 87(2)(b) because he does a lot of stops and writes lots of reports. In the report, Officer Contreras noted that he observed “furtive movements” by § 87(2)(b) and he explained that § 87(2)(b) might have been moving around during the stop and that could have been the reason for noting “furtive movements” in the report. However, he did not specifically remember what § 87(2)(b) was doing at the time of his interview.

The group was standing to the rear of the vehicle at some point after Officer Contreras arrived at the location. Officer Contreras stated that he believed Officer Charles was checking the vehicle while the individuals were standing to the rear of the vehicle, but he was not certain. Officer Contreras did not observe any other officer check the vehicle and he did not check the vehicle.

Officer Contreras did not remember asking any of the individuals for their IDs, but he knew that the individuals had provided identification, so he believed an officer might have requested them. However, he was not sure who did. Officer Contreras did not observe any officer snatch anyone’s wallet from him and go through the wallet, and he did do so. Also Officer Contreras did not hear any officer say anything to the effect of “This guy gets pussy.” He did not make the statement and he did not hear any officer respond to any such statement. He also did not hear any officer use the word “pussy” at any point during the interaction.

Officer Contreras described the demeanor of the individuals as “normal.” He reiterated that he only observed the individuals talking to Officer Charles and his partner (Officer Pichardo), but he did not hear what they were saying and he did not remember them being loud or belligerent. Officer Contreras did not remember verbally interacting with any of the individuals.

They were there for about fifteen to twenty minutes. Officer Contreras was unsure about what the initial vehicle stop was for. Officer Contreras believed that he and Officer Charles left the scene at the same time. Sgt. Zweben was in the vehicle when Officer Contreras returned to drive away.

### ***Communications Documents***

The Sprint indexes for the 25<sup>th</sup> and the 23<sup>rd</sup> Precincts on December 9, 2008, which notes all 911 jobs for the entire day, did not have any information regarding any report about an assault with a knife or any similar crime within the timeframe of the incident (encl. 12a-e).

### ***Police Documents***

The “stop and frisk” report (encl. 11b) prepared by Officer Contreras for § 87(2)(b) notes that the officers observed § 87(2)(b) for approximately fifteen minutes and he was stopped (at the intersection of East 120<sup>th</sup> Street and 3<sup>rd</sup> Avenue) due to his furtive movements. It also notes that the “area has a high incidence of reported offense,” and that § 87(2)(b) was frisked because of his furtive movements. The report was reviewed by Sgt. Zweben.

The license index search results for December 9, 2008 obtained from the New York State Police Superintendent notes that Officer Charles conducted a warrant search of § 87(2)(b)'s license plates (#§ 87(2)(b)) at 9:59PM (encl. 13a-c).

### ***Notice of Claim***

On May 11, 2009, § 87(2)(b) Sharina Soriano of the NYC Office of the Comptroller confirmed that § 87(2)(b) and § 87(2)(b) have not filed a notice of claim regarding this incident (encl. 16f).

### ***Subject Officer History***

Officer Pichardo and Officer Charles have been with the NYPD for two years and they have not been the subject of any substantiated CCRB allegations (encl. 2a-b).

Sgt. Zweben has been with the NYPD for five years and he has not been the subject of any substantiated CCRB allegations (encl. 2c).

Officer Contreras has been with the NYPD for one year and he has not been the subject of any substantiated CCRB allegations (encl. 2d).

### ***Complainant CCRB History***

§ 87(2)(b)  
§ 87(2)(b)  
§ 87(2)(b)  
§ 87(2)(b)

§ 87(2)(b) has not filed any complaint with the CCRB (encl. 3b)

§ 87(2)(b)  
§ 87(2)(b)  
§ 87(2)(b)

## **Conclusions and Recommendations**

### ***Subject Officer Identification***

§ 87(2)(b) obtained the names of three of the officers, Officer Charles, Officer Pichardo and Officer Contreras and provided descriptions for all four officers. The investigation determined that Officer Charles and Officer Pichardo were the initial two officers to stop § 87(2)(b)'s vehicle; therefore, allegations A and B are pleaded against them. § 87(2)(b) and § 87(2)(b) also alleged that they were all frisked and searched by the officers. Because Sgt. Zweben was the supervisor present during the incident, allegations C and D are pleaded against him. § 87(2)(b) and § 87(2)(b) further alleged that Officer Charles, Officer Pichardo and Officer Contreras spoke discourteously towards them; therefore, allegations E, F, and G are

pleaded against them. Finally, § 87(2)(b) alleged that Officer Charles and Sgt. Zweben searched his vehicle. Again, because Sgt. Zweben was the supervisor, allegation H is pleaded against him.

### *Undisputed Facts*

It is undisputed that Officer Charles and Officer Pichardo stopped § 87(2)(b)'s vehicle and that Officer Contreras and Sgt. Zweben joined them shortly afterwards. It is undisputed that all four individuals were frisked. It is also undisputed that Officer Charles and Sgt. Zweben searched the vehicle.

§ 87(2)(b), § 87(2)(g)

[REDACTED]

§ 87(2)(b), § 87(2)(g)

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

§ 87(2)(b), § 87(2)(g)

[illegible]

[REDACTED]

**Allegation A: Officer Victor Charles stopped the car in which § 87(2)(b)**

██████████ and an individual were occupants.

**Allegation B: Officer Fermin Pichardo stopped the car in which § 87(2)(b)**

██████████ and an individual were occupants.

It is undisputed that Officer Charles and Officer Pichardo stopped § 87(2)(b)'s vehicle.

According to Barry Kamins' *New York State Search and Seizure*, "an officer may stop a vehicle to investigate criminal activity when he has a reasonable suspicion that its occupants have been engaged, are presently engaged, or are about to engage in conduct in violation of the law" (encl. 1e). Kamins also discusses instances when officers receive information over the radio that a crime has been committed in the area and notes that "the specificity of the information regarding the vehicle and its occupants as well as the spatial and temporal nexus between the location of the car and the location of the crime" are two factors to be considered in determining whether reasonable suspicion exists (encl. 1c-d).

As noted above, the officers provided consistent statements regarding the fact that there was a report of an assault with a weapon involving approximately three or four Hispanic males in a grey/silver vehicle. Both Officer Charles and Officer Pichardo also noted that the individuals were observed and stopped approximately two to five minutes after the radio run. § 87(2)(b), § 87(2)(g)

\_\_\_\_\_ according to the discussion on *Innocuous Behavior by Occupants* in Kamins' *New York Search and Seizure* (encl. 1a-b). Finally, the Sprints and Sprint indexes did not reveal that there was any such report, and the "stop and frisk" report prepared immediately following the stop made no notification of any such report.

§ 87(2)(g)

§ 87(2)(g)

**Allegation C: Sgt. Howard Zweben supervised the frisk of § 87(2)(b) and an individual.**

It is undisputed that the individuals were frisked subsequent to the vehicle stop. All the officers acknowledged frisking the occupants of the vehicle and asserted that this was done because of the report that was transmitted over the radio. Also, both Officer Charles and Officer Pichardo noted that § 87(2)(b) did not immediately stop when he was pulled over, but instead § 87(2)(b) continued to drive, and as asserted by Officer Charles, in an erratic manner. Officer Charles also added that § 87(2)(b) was fidgeting behind the wheels and moving his arms around as if he was trying to put something away.

As noted above, the Sprints and Sprint indexes did not reveal any crime report within the time frame of the stop as purported by the officers. However, Sgt. Zweben, who was in a separate vehicle from both Officer Charles and Officer Pichardo and was interviewed at the CCRB approximately one month after Officer Charles and Officer Pichardo were interviewed, corroborated the fact that there was a crime report shortly before the individuals were stopped. § 87(2)(g)

§ 87(2)(b), § 87(2)(g)

**Allegation D: Sgt. Howard Zweben supervised the search of § 87(2)(b) and an individual.**

§ 87(2)(b) alleged that the officers searched all the occupants of the vehicle. § 87(2)(b), § 87(2)(g)

**Allegation E: Officer Victor Charles spoke obscenely and/or rudely to § 87(2)(b) and § 87(2)(b)**

**Allegation F: Officer Fermin Pichardo spoke obscenely and/or rudely to § 87(2)(b) and § 87(2)(b)**

**Allegation G: Officer Christopher Contreras spoke obscenely and/or rudely to § 87(2)(b) and § 87(2)(b)**

§ 87(2)(b) and § 87(2)(b) both corroborated the fact that after Officer Charles discovered condoms inside § 87(2)(b)'s wallet, Officer Charles, Officer Pichardo and Officer Contreras made discourteous comments towards them. However, the officers denied speaking discourteously towards the individuals at any point during the interaction. § 87(2)(g)

**Allegation H: Sgt. Howard Zweben supervised the search of the car in which § 87(2)(b) and an individual were occupants.**

It is not disputed that Officer Charles and Sgt. Zweben searched § 87(2)(b)'s car. However, the extent of the search conducted by the officers remains disputed. Both § 87(2)(b) and § 87(2)(b) alleged that the officers checked the glove compartment as they checked the interior of the vehicle. However, both officers contended that they checked only the reachable and grabbable areas of the vehicle after frisking the individuals.

The investigation notes that in *People v. Carvey* and *People v. Mundo*, in which the circumstances leading to the vehicle searches that took place are analogous to this case, the courts found that the searches were lawful (encl. 1e-g). In these cases, the behavior of the occupant(s) of the vehicle before he exited the car and the erratic manner in which the driver drove before he came to a stop even as the officers attempted to stop him were contributing factors which justified the search of a limited area of the vehicle.

§ 87(2)(g)

Date: